

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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IN RE REGIONS MORGAN KEEGAN  
SECURITIES, DERIVATIVE and ERISA  
LITIGATION

This Document Relates to:

*In re Regions Morgan Keegan Open-End  
Mutual Fund Litigation,*  
No. 2:07-cv-02784-SHM-dkv

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MDL Docket No. 2009

Judge Samuel H. Mays, Jr.

Magistrate Judge Diane K. Vescovo

Oral Argument Requested

**LEAD PLAINTIFFS' MOTION FOR LEAVE TO AMEND CONSOLIDATED  
AMENDED CLASS ACTION COMPLAINT PURSUANT TO RULE 15(a)(2) OF  
THE FEDERAL RULES OF CIVIL PROCEDURE**

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### **Motion**

Come now Lead Plaintiffs,<sup>1</sup> by their counsel, and move this Court for leave to amend Lead Plaintiffs' Consolidated Amended Class Action Complaint ("CAC" [ECF No. 218]) pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure ("Motion for Leave to Amend") on the basis that (1) subsequent to the entry of the Court's September 30, 2012 Order Granting in Part and Denying in Part Defendants' Motions to Dismiss ("1934 Act Dismissal Order" [ECF No. 272]) there was a change in the controlling law in the Sixth Circuit that Courts are to follow in evaluating and determining scienter allegations, and (2) new evidence supporting a strong inference of scienter on the part of Defendants became available to Plaintiffs after they filed the CAC.

### **Memorandum**

Lead Plaintiffs' Memorandum in Support of Motion for Leave to Amend Consolidated Amended Class Action Complaint Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure is being **filed under seal** ("Memorandum in Support") as is the [Proposed] Second Consolidated Amended Class Action Complaint.

In its 1934 Act Dismissal Order, the Court dismissed Plaintiffs' claims under §§ 10(b) and 20 of the Securities Exchange Act of 1934 ("1934 Act claims") on the grounds that Plaintiffs did not plead facts giving rise to a "strong inference" of scienter, as required by the Private Securities Litigation Reform Act of 1995 ("PSLRA"). In its December 30, 2010 Order ("Recon. Order" [ECF No. 291]), the Court denied the parties' motions for reconsideration of the 1934 Act Dismissal Order. Plaintiffs Memorandum in Support, which is being filed under seal contemporaneously herewith, addresses the change in law in the Sixth Circuit concerning the scienter analysis that is to be employed by a Court when considering 1934 Act claims, Plaintiffs' failure to clearly identify the defendants on the 1934 Act claims, and new facts that have become known to Plaintiffs since the filing of the CAC that, taken together with the factual allegations in the CAC,

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<sup>1</sup> Lead Plaintiffs, the "RMK Open-End Funds Group," are the Kathryn S. Cashdollar Estate, Dajalis Ltd., Jeanette H. Landers, H. Austin Landers, and Frank D. Tutor.

give rise to a strong inference of scienter.

**Certificate of Consultation**

Pursuant to Rule LR7.2(a)(1)(B) of the Local Rules of the United States District Court for the Western District of Tennessee, filed herewith is a Certificate of Consultation with Counsel affirming that counsel for Plaintiffs and Defendants have consulted with one another concerning this Motion for Leave to Amend. As stated in the Certificate of Consultation, Defendants oppose Plaintiffs' Motion for Leave to Amend.

**Proposed Order**

A proposed Order granting this Motion for Leave to Amend is being forwarded to the Court by e-mail transmission in accordance with the requirements of LR7.2(a)(1)(A).

DATED: June 6, 2012

Respectfully submitted,

**APPERSON CRUMP PLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2012, the foregoing document was filed with the Clerk of Court by using the CM/ECF system, which system will send a notice of the electronic filing of same to the following:

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